

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR
WARMING PRODUCT LIABILITY
LITIGATION

MDL No.: 15-md-02666 (JNE/FLN)

This Document Relates To:

LOLETHIA DAVIS,

Civil Action No.: 16-CV-02661-JNE-FLN

Plaintiff,

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Lolethia Davis, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 637], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In August of 2015, Ms. Davis contacted undersigned counsel regarding an infection and subsequent treatment that she experienced, allegedly caused by the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.
3. On August 5, 2016, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

4. Efforts to contact Ms. Davis to inform her of the Plaintiff Fact Sheet and other necessary steps of the litigation after filing this action were unsuccessful, including phone calls on the following dates:

- November 1, 2016
- November 11, 2016
- November 15, 2016
- November 18, 2016
- November 28, 2016
- December 2, 2016
- December 6, 2016
- December 7, 2016
- February 2, 2017
- March 10, 2017
- May 10, 2017
- July 14, 2017

5. Additionally, letters were sent to Ms. Davis on the following dates requesting her response to complete the Plaintiff Fact Sheet and warning that failure to comply would result in dismissal of her case:

- December 21, 2016
- January 21, 2017
- May 10, 2017

- July 14, 2017

6. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim.

Accordingly, undersigned counsel requests that the current action not be dismissed with prejudice and that Ms. Davis be given a reasonable amount of time to contact counsel to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and continue the case.

Dated: August 10, 2017

KENNEDY HODGES, LLP

By: /s/ David W. Hodges
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on August 10, 2017 a copy of the forgoing instrument was served on all parties via the Court's electronic filing system.

By: /s/ David W. Hodges
David W. Hodges